



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2003

Ms. Jennifer A. Soffer
Assistant General Counsel
Texas State Board of Medical Examiners
P.O. Box 2018
Austin, Texas 78768-2018

OR2003-5790

Dear Ms. Soffer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186122.

The Texas State Board of Medical Examiners (the "board") received a request for information pertaining to a named physician, including correspondence, credentials and profile materials, and records relating to complaints and disciplinary actions. You indicate that there is no responsive information relating to disciplinary actions. We note that chapter 552 of the Government Code does not require the board to release information that did not exist when it received this request or to create responsive information.¹ You state that the board has released public physician verification and profile reports. You have submitted information that you claim is excepted from disclosure under section 552.101 of the Government Code. You also notified the person to whom the submitted information relates of this request for information and of his right to submit arguments to this office as to why the information should not be released.² As of the date of this decision, we have received no correspondence from the individual whom you notified. We have considered your arguments and have reviewed the submitted information you submitted.

We begin by noting that some of the submitted information is the same type of information that is the subject of five pending lawsuits between the board and the Office of the Attorney General, styled *Texas State Board of Medical Examiners v. Abbott*, Cause No. GN302004,

¹ See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² See Gov't Code §§ 552.304, .305; Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

345th District Court of Travis County, Texas; *Texas State Board of Medical Examiners v. Abbott*, Cause No. GN302509, 353rd District Court of Travis County, Texas; *Texas State Board of Medical Examiners v. Abbott*, Cause No. GN302510, 53rd District Court of Travis County, Texas; *Texas State Board of Medical Examiners v. Abbott*, Cause No. GN302640, 98th District Court of Travis County, Texas; and *Texas State Board of Medical Examiners v. Abbott*, Cause No. GN302065, 250th District Court of Travis County, Texas. Furthermore, your arguments here are similar to your arguments in the litigation of the prior rulings. Therefore, this decision does not address your claims with regard to the type of information that is at issue in the pending litigation. We will allow the trial court to determine whether any of that information must be released to this requestor.

You claim that the rest of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information that other statutes make confidential. You claim that the rest of the submitted information is confidential under section 164.007(c) of the Occupations Code, which provides in part:

(c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder.

Occupations Code § 164.007(c). You indicate that the rest of the submitted information is contained in an investigative file. You do not inform us that the board is authorized to release that information to this requestor. *See id.* § 164.007(f). Based on your representations and our review of the information at issue, we have marked the information that we conclude is confidential under section 164.007(c) of the Occupations Code. The board must withhold that information under section 552.101 of the Government Code as information made confidential by law. As we are able to make this determination, we need not address your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

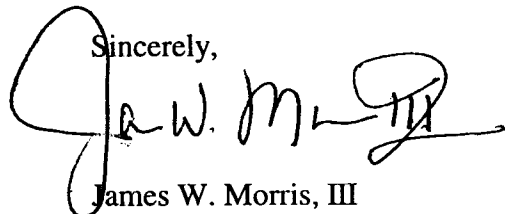
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 186122

Enc: Submitted documents

c: Ms. Beverley Church
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